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 ROOTS READY MADE GARMENTS CO. W.L.L.

UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROOTS READY MADE GARMENTS CO.
 W.L.L.,

Plaintiff,

v.

THE GAP, INC., a/k/a GAP, INC., GAP
 INTERNATIONAL SALES, INC.,
 BANANA REPUBLIC, LLC, OLD NAVY,
 LLC,

Defendants.

Case No.: C 07 3363 CRB

PLAINTIFF'S EX PARTE APPLICATION
 TO EXTEND TIME TO SERVE AND FILE
 OPPOSITIONS TO MOTIONS IN LIMINE

Date: N/A
 Time: N/A
 Courtroom: 8, 19th Floor
 Judge: Charles R. Breyer

Pursuant to Civil Local Rule 6-3, Plaintiff Roots Ready Made Garments Co. W.L.L. ("Plaintiff" or "Roots") respectfully submits this ex parte application to extend the time for Roots to serve its oppositions to Defendant Gap's motions *in limine* to Monday, September 22. The parties served their motions *in limine* on Monday, September 15, pursuant to a schedule that was negotiated at a time when the pre-trial conference was scheduled for October 1. The Court has since rescheduled the conference for September 26. Gap served six motions *in limine* on September 15, one of which is more than double the seven-page limit. Under this Court's Guidelines for Trial and Final Pretrial Conference In Civil Jury Cases ("Trial Guidelines"), which requires fully-briefed motions *in limine* to be filed seven days before the pre-trial

conference, Trial Guidelines ¶ 1(f), Roots only three days to prepare its opposition briefs. Plaintiff respectfully requests that the Court issue an order extending the time for Roots to serve and file its opposition briefs to Monday, September 22. This extension is necessary given the excessive volume of Defendants' submissions, and because of a serious medical issue affecting the family of one of Plaintiff's attorneys this week. Gap's counsel has refused to consent to any adjournment.

Factual Background

During the summary judgment hearing on August 29, this Court re-scheduled the pre-trial conference from September 30 to October 3. Declaration of Bradley J. Nash ("Nash Decl.") ¶ 3. Pursuant to that schedule, the parties were to serve motions *in limine* on September 12 (20 calendar days before the conference); oppositions would be due on September 23; and the fully-briefed motions would be filed on September 26. *Id.*

On September 11, the Court issued an order rescheduling the conference for October 1 – a date when counsel for Roots and Gap were unavailable. *Id.* ¶ 4. On September 12, the parties jointly filed a stipulation and proposed order, requesting that the pretrial conference be adjourned until October 6. *Id.* ¶ 5. The parties also agreed to exchange motions *in limine* on Monday, September 15, rather than September 12. *Id.* ¶ 6. Plaintiff's counsel, Bradley Nash, requested this extension because his wife required multiple emergency room visits that week due to intractable pain caused by kidney stones. *Id.* Later that day, the court issued an order rescheduling the pre-trial conference to September 26. *Id.* ¶ 7.

On September 15, the parties served their motions *in limine*. *Id.* ¶ 8. Roots served two motions. *Id.* Gap served six motions (exceeding the five-motion limit), one of which is 17 pages long (exceeding the seven-page limit).¹ *Id.* Noting that the Trial Guidelines require the parties to file fully-briefed motions *in limine* seven days before the conference, Gap proposed

¹ Gap did not seek "advance permission" to exceed the motion and page limits, as required by the Trial Guidelines. Trial Guidelines ¶ 1(f). Rather, Gap's counsel, Dan Jackson informed Mr. Nash on September 15 of Gap's intent to exceed both the five-motion limit, and the seven-page limit for one of the briefs. Nash Decl. ¶ 9. When Mr. Nash did not immediately consent, Mr. Jackson announced that Gap would file an ex parte application with the Court simultaneously with service of the motions. *Id.*

1 that the parties agree to serve oppositions to the motions three days later, on Thursday,
 2 September 18. *Id.* ¶ 10. Counsel for Roots responded that three days would not allow Roots
 3 sufficient time to respond to six separate motions, totaling 46 pages. *Id.* ¶ 11. In addition, the
 4 schedule was unworkable because (1) Mr. Nash's wife was scheduled to have a surgical
 5 procedure on September 17; and (2) the parties also needed to exchange and negotiate drafts of
 6 other materials for the joint proposed pre-trial order. *Id.* Gap's counsel refused to consent to
 7 any adjournment of the pre-trial deadlines. *Id.* ¶ 12.

8 **Argument**

9 The Trial Guidelines contemplate that each party will serve no more than five motions
 10 *in limine*, limited to seven pages each; that the motions will be served 20 days before the pre-
 11 trial conference; and that the parties will have 10 days to serve opposition briefs. Under the
 12 current schedule, however, Plaintiff is now left with only three days to prepare oppositions to
 13 six motions in limine, including one motion that is 17 pages long. The schedule is particularly
 14 unworkable because the wife of one of plaintiff's attorneys is scheduled to have surgery this
 15 week.

16 Accordingly, Plaintiff respectfully requests that the Court permit it to serve and file its
 17 oppositions to Defendants' motions *in limine* on Monday, September 22.

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 19 DATED: September 16, 2008

COVINGTON & BURLING

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 21 By: /s/
 22 RICHARD A. JONES

23 Attorneys for
 24 ROOTS READY MADE GARMENTS CO.
 25 W.L.L.
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